

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Isabelle ROLLAT et al.) Parent Group Art Unit: 1615
)
Continuation of U.S. Application) Parent Examiner: C. Evans
No. 09/695,392)
)
Filed: October 28, 2003)
)
For: RESHAPABLE HAIR STYLING)
COMPOSITION COMPRISING)
ACRYLIC COPOLYMERS)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicants bring to the attention of the Examiner the following information. This Information Disclosure Statement is being filed to the undersigned's knowledge, before the mailing date of a first Office Action on the merits for the above-referenced application. Since there is no PTO-1449 form associated with this Information Disclosure Statement, Applicants respectfully request that the Examiner indicate in the next paper that the information herein had been considered.

Applicants would like to bring to the Examiner's attention that the invention claimed in the above referenced application is associated with a Collaboration Agreement between the assignee of the application, L'Oréal, and a U.S. third party corporation. It is the wish of the signatories of the Agreement that the identity of the

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third party not be made public. In view of Applicants' duty to disclose information that may be material to the patentability of the application, Applicants present the following information regarding the collaboration and events leading to the filing of the application. Applicants respectfully request that the Examiner acknowledge consideration of this information in the next PTO communication.

When the two parties entered into the collaboration, they recognized that L'Oréal had experience and expertise in cosmetology, had performed R&D work in the field of cosmetic products, had studied the innovative concept of reshapable hair products using adhesive materials, was interested in testing materials to evaluate and determine their possible use in reshapable hair products, and had the facilities and capabilities to test such materials. Likewise, the parties recognized that the third party had experience and expertise in chemical compounds, had performed R&D work in the field of polymers and other materials that could have applications in the field of cosmetic products, and had the facilities and capabilities to select and prepare candidate adhesive materials. Accordingly, the parties' objective for the Collaboration was for the third party to select candidate adhesive materials and for L'Oréal to evaluate such candidate adhesives and to develop any novel reshapable hair formulations based on any such adhesive.

This objective progressed as follows. L'Oréal provided to the third party target properties that L'Oréal believed necessary for an adhesive material to be useful in a reshapable hair formulation. After a period of investigation, the third party provided L'Oréal with a list of polymer classes as potential candidates, some of which were approved by L'Oréal for further development.

In this laboratory portion of the project, the third party began the development of adhesive materials falling within the general scope of the approved candidate classes. The third party supplied, free of charge, to L'Oréal samples of these adhesives materials, as they were developed. The third party also provided information regarding its own testing of the adhesive materials, including testing that the third party believed may be predictive of its suitability for a reshapable hair styling formulation.

L'Oréal evaluated the adhesive materials and identified the most promising examples, and, in some instances, provided feedback to the third party to optimize the adhesive materials for use in formulations. L'Oréal determined that neither the third party's testing nor L'Oréal's preliminary testing of an adhesive sample was truly predictive of a reshapable effect for a formulation comprising the adhesive material. The only predictive testing was L'Oréal's *in vivo* testing, as described in the application, conducted under the direction and control of Mrs. Rollat and Mr. Samain.

Applicants note that there had been a difference of opinion between L'Oréal and the third party regarding inventorship for the claimed invention of this and related applications. Both parties recognized that inventorship is a difficult determination to make in the context of a collaboration and agreed to allow attorneys of the undersigned attorney's law firm to make a determination. The facts underlying the development of the invention, as claimed, were investigated by those attorneys. The attorneys concluded that Mrs. Rollat and Mr. Samain conceived of the compositions with a reshapable effect and, therefore are the inventors of the claimed

invention. That determination was communicated to the parties orally. While the third party has orally indicated that some employees of the third party disagree with the legal conclusion, the third party orally chose not to contest that determination by arbitration, which was their right under the Agreement, or by filing a paper in this application, as invited by Applicants.

The undersigned believes that this was a fair and impartial decision, particularly since under the Agreement, the ownership of the patent rights was predetermined, irrespective of the outcome of the inventorship investigation. Specifically, all rights to any application claiming a composition with a reshapable effect belong to L'Oréal, irrespective of who was the employer of the inventors. Nevertheless, in view of recent decisions of the Federal Circuit, Applicants believe their duty of disclosure to the PTO requires presentation of these facts to the Examiner.

The undersigned notes that there is no question that conception is the touchstone of inventorship. Hence, the underlying issue that was investigated was "who conceived of the claimed invention?" The claims of the above-referenced application are directed to compositions with a reshapable effect comprising a specific subclass of adhesive materials. Applicants do not question whether the third party invented the adhesive materials that were investigated by Mrs. Rollat and Mr. Samain. However, Applicants submit that the conception of the adhesive material does not intersect with the conception of the reshapable hair styling composition. If that were always the case, all patent applications claiming cosmetic compositions would need to identify the individuals, who developed the compounds

that are found in the claimed compositions, as co-inventors. That has not been the case in this field. Here, while the third party did provide test data regarding the adhesive materials, the initial concept of a reshapable product and the target properties for an adhesive were from L'Oréal. Further, it has been the experience of L'Oréal and, in particular, Mrs. Rollat and Mr. Samain that this is a highly unpredictable art and that only their *in vivo* testing is truly predictive of a reshapable effect. In fact, it is possible that conception did not even occur until there was an actual reduction to practice, which was conducted under the control and supervision of only the named inventors, Mrs. Rollat and Mr. Samain.

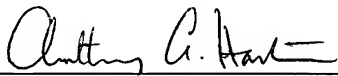
Applicants reserve the right to take appropriate action to establish the patentability of the disclosed invention over the above information, should the Examiner apply this information against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 28, 2003

By: 
Anthony A. Hartmann
Reg. No. 43,662

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INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicants bring to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed concurrently with the above-referenced application.

Applicants respectfully request that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form. Each document marked with an asterisk (*) was either submitted by Applicants or cited by the Office in prior Application No. 09/695,392, upon which Applicants have claimed the benefit of priority under 35 U.S.C. § 120.

Copies of the listed documents without an asterisk (*) are attached.

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With respect to the non-English language documents, Applicant submits the following remarks:

1. **EP 0 761 199** - An abstract of the disclosure of this document can be found in the English language Abstract, which was previously submitted in prior Application No. 09/695,392.
2. **EP 1 174 113** - An abstract of the disclosure of this document can be found in the English language Abstract, which was previously submitted in prior Application No. 09/695,392.
3. **FR 2 760 360** - This document is believed to be a foreign language counterpart of U.S. Patent No. 6,346,234, which was previously submitted in prior Application No. 09/695,392.
4. **JP 10-95714** - An abstract of the disclosure of this document can be found in the English language Abstract, which was previously submitted in prior Application No. 09/695,392.
5. **JP 10-203937** - An abstract of the disclosure of this document can be found in two English language Abstracts and an ISTA machine translation, which were previously submitted in prior Application No. 09/695,392.
6. **JP 48-048648** - An abstract of the disclosure of this document can be found in the English language Abstract, which was previously submitted in prior Application No. 09/695,392.
7. **JP 56-090006** - An abstract of the disclosure of this document can be found in the English language Abstract, which was previously submitted in prior Application No. 09/695,392.

8. **JP 57-050912** - An abstract of the disclosure of this document can be found in the English language Abstract, which was previously submitted in prior Application No. 09/695,392.

9. **WO 98/38969** - An English language abstract of this foreign language document can be found on the title page of this document, which was previously submitted in prior Application No. 09/695,392.

10. **WO 99/08652** - An English language abstract of this foreign language document can be found on the title page of this document, which was previously submitted in prior Application No. 09/695,392.

11. **WO 99/63954** - An English language abstract of this foreign language document can be found on the title page of this document, which was previously submitted in prior Application No. 09/695,392.

Additionally, Applicants would like to bring to the Examiner's attention the following co-pending applications, which the Examiner might consider to relate to similar subject matter and which were all submitted with the filing of the parent application:

1. **Title:** ACRYLIC-BASED COPOLYMER COMPOSITIONS FOR COSMETIC AND PERSONAL CARE
By: Steven S. KANTNER et al.
Filed: October 25, 2000
Application No.: 09/696,468
Attorney Docket No.: 55980USA3A.002

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2. **Title:** RESHAPABLE HAIR STYLING COMPOSITION COMPRISING
AQUEOUS COLLOIDAL DISPERSIONS OF SULFONATED
POLYURETHANE UREA
By: Isabelle ROLLAT et al.
Filed: July 27, 2000
Application No.: 09/627,121; issued as 6,517,821
Attorney Docket No.: 05725.0661-00000
3. **Title:** RESHAPABLE STYLING COMPOSITION COMPRISING
ACRYLIC EMULSIONS
By: Isabelle ROLLAT et al.
Filed: July 27, 2000
Application No.: 09/627,055
Attorney Docket No.: 05725.0662-00000
4. **Title:** RESHAPABLE HAIRSTYLING COMPOSITION COMPRISING
POLYURETHANE DISPERSIONS
By: Isabelle ROLLAT et al.
Filed: July 27, 2000
Application No.: 09/627,785; issued as 6,613,314
Attorney Docket No.: 05725.0663-00000
5. **Title:** RESHAPABLE HAIR STYLING COMPOSITIONS
COMPRISING ACRYLIC COPOLYMERS
By: Isabelle ROLLAT et al.
Filed: October 25, 2000
Application No.: 09/695,392; allowed
Attorney Docket No.: 05725.0756-00000
6. **Title:** RESHAPABLE HAIR STYLING COMPOSITION COMPRISING
SILICON-CONTAINING POLYCONDENSATES
By: Isabelle ROLLAT et al.
Filed: January 26, 2001
Application No.: 09/769,311; issued as 6,520,186
Attorney Docket No.: 05725.0821-00000
7. **Title:** RESHAPABLE HAIR STYLING COMPOSITION COMPRISING
(METH)ACRYLIC COPOLYMER OF FOUR OR MORE
MONOMERS PARTICLES
By: Isabelle ROLLAT et al.
Filed: June 22, 2001
Application No.: 09/886,009; allowed
Attorney Docket No.: 05725.0911-00000

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8. **Title:** RESHAPABLE HAIR STYLING COMPOSITION COMPRISING HETEROGENEOUS (METH)ACRYLIC COPOLYMER PARTICLES
By: Isabelle ROLLAT et al.
Filed: June 22, 2001
Application No.: 09/886,013; allowed
Attorney Docket No. 05725.0912-00000
9. **Title:** RESHAPABLE HAIR STYLING RINSE COMPOSITION COMPRISING (METH)ACRYLIC COPOLYMERS
By: Isabelle ROLLAT et al.
Filed: December 20, 2001
Application No.: 10/023,330
Attorney Docket No.: 05725.0922-00000
10. **Title:** RESHAPABLE HAIR STYLING NON-RINSE COMPOSITION COMPRISING (METH)ACRYLIC COPOLYMERS
By: Isabelle ROLLAT et al.
Filed: December 20, 2001
Application No.: 10/022,253
Attorney Docket No. 05725.0959-00000

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and Applicants determine that the cited documents do not constitute "prior art" under United States law, Applicants reserve the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

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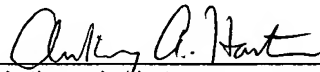
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Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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Dated: October 28, 2003

By: 
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INFORMATION DISCLOSURE CITATION
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| | | | |
|------------------|------------------------|------------|---|
| Atty. Docket No. | 05725.0756-01 | Appln. No. | Continuation of U.S. Appln No. 09/695,392 |
| Applicant | Isabelle ROLLAT et al. | | |
| Filing Date | October 28, 2003 | Group: | 1615 |

| U.S. PATENT DOCUMENTS | | | | | | | |
|-----------------------|----|-----------------|--------|--------------------|-------|-----------|----------------------------|
| Examiner Initial* | | Document Number | Date | Name | Class | Sub Class | Filing Date If Appropriate |
| | 1* | Re. 29,871 | Dec-78 | Papantoniou et al. | | | |
| | 2* | 3,577,517 | May-71 | Kubot et al. | | | |
| | 3* | 3,660,561 | May-72 | Shepherd et al. | | | |
| | 4* | 4,172,122 | Oct-79 | Kubik et al. | | | |
| | 5* | 4,196,190 | Apr-80 | Gehman et al. | | | |
| | 6* | 4,552,755 | Nov-85 | Randen | | | |
| | 7* | 4,762,703 | Aug-88 | Abrutyn | | | |

| FOREIGN PATENT DOCUMENTS | | | | | | | |
|--------------------------|-----|-----------------|--------|---------|-------|-----------|-----------------------|
| | | Document Number | Date | Country | Class | Sub Class | Translation Yes or No |
| | 8* | 0 201 342 | Dec-86 | Europe | | | |
| | 9* | 0 299 025 | Jan-89 | Europe | | | |
| | 10* | 0 524 346 | Jan-93 | Europe | | | |
| | 11* | 0 694 565 | Jan-96 | Europe | | | |

| OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.) | | |
|--|-----|----------------------------------|
| | 12* | Derwent Abstract of JP 10-95714 |
| | 13* | Derwent Abstract of JP 10-203937 |
| | 14* | Derwent Abstract of JP 48-48648 |
| | 15* | Derwent Abstract of JP 56-90006 |

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| Examiner | Date Considered |
| *Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. | |
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| Atty. Docket No. | 05725.0756-01 | Appln. No. | Continuation of U.S. Appln No. 09/695,392 |
| Applicant | Isabelle ROLLAT et al. | | |
| Filing Date | October 28, 2003 | Group: | 1615 |

| U.S. PATENT DOCUMENTS | | | | | | | |
|-----------------------|-----|-----------------|--------|------------------|-------|-----------|----------------------------|
| Examiner Initial* | | Document Number | Date | Name | Class | Sub Class | Filing Date If Appropriate |
| | 16* | 4,859,455 | Aug-89 | Nowak Jr. et al. | | | |
| | 17* | 4,963,348 | Oct-90 | Bolich et al. | | | |
| | 18* | 4,978,527 | Dec-90 | Brink et al. | | | |
| | 19* | 4,985,239 | Jan-91 | Yahagi et al. | | | |
| | 20* | 5,019,377 | May-91 | Torgerson | | | |
| | 21* | 5,026,540 | Jun-91 | Dixon et al. | | | |
| | 22* | 5,104,642 | Apr-92 | Wells et al. | | | |

| FOREIGN PATENT DOCUMENTS | | | | | | | |
|--------------------------|-----|-----------------|--------|---------|-------|-----------|-----------------------|
| | | Document Number | Date | Country | Class | Sub Class | Translation Yes or No |
| | 23* | 0 985 401 | Mar-00 | Europe | | | |
| | 24* | 0 985 405 | Mar-00 | Europe | | | |
| | 25* | 10-95714 | Apr-98 | Japan | | | Abstract |
| | 26* | 10-203937 | Aug-98 | Japan | | | Yes |
| | 27* | 48-48648 | Jul-73 | Japan | | | Abstract |

| OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.) | | |
|--|-----|--|
| | 28* | Derwent Abstract of JP 57-50912 |
| | 29* | English language translation of JP 10-203937 |
| | 30* | Dialog Abstract of JP 10-203937 |

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|-----------------------|-----|-----------------|--------|-----------------|-------|-----------|----------------------------|
| Examiner Initial* | | Document Number | Date | Name | Class | Sub Class | Filing Date If Appropriate |
| | 31* | 5,120,532 | Jun-92 | Wells et al. | | | |
| | 32* | 5,171,807 | Dec-92 | Kopolow | | | |
| | 33* | 5,173,291 | Dec-92 | Brink et al. | | | |
| | 34* | 5,219,559 | Jun-93 | Kopolow | | | |
| | 35* | 5,238,736 | Aug-93 | Tseng et al. | | | |
| | 36* | 5,413,775 | May-95 | Hatfield et al. | | | |

| FOREIGN PATENT DOCUMENTS | | | | | | | |
|--------------------------|-----|-----------------|--------|---------|-------|-----------|-----------------------|
| | | Document Number | Date | Country | Class | Sub Class | Translation Yes or No |
| | 37* | 56-90006 | Jul-81 | Japan | | | Abstract |
| | 38* | 57-50912 | Mar-82 | Japan | | | Abstract |
| | 39* | WO 93/06816 | Apr-93 | PCT | | | |
| | 40* | WO 94/02112 | Feb-94 | PCT | | | |

| OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.) | |
|--|--|
| 41* | Co-pending U.S. Application No. 09/380,467; Attorney Docket No.: 05725.0471-00000 Title: HAIRSTYLING COMPOSITION CAPABLE OF BEING REMODELLED Inventors: Isabelle ROLLAT et al. U.S. Filing Date: September 3, 1999 |
| 42* | Co-pending U.S. Application No. 09/627,121; Attorney Docket No.: 05725.0661-00000 Title: RESHAPABLE HAIR STYLING COMPOSITION COMPRISING AQUEOUS COLLOIDAL DISPERSIONS OF SULFONATED POLYURETHANE UREA Inventors: Isabelle ROLLAT et al. U.S. Filing Date: July 27, 2000 |

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U.S. PATENT DOCUMENTS

| Examiner Initial* | | Document Number | Date | Name | Class | Sub Class | Filing Date If Appropriate |
|-------------------|-----|-----------------|--------|----------------|-------|-----------|----------------------------|
| | 43* | 5,441,728 | Aug-95 | Tsauer et al. | | | |
| | 44* | 5,460,804 | Oct-95 | Krzysik | | | |
| | 45* | 5,501,851 | Mar-96 | Mudge et al. | | | |
| | 46* | 5,516,508 | May-96 | Thaman et al. | | | |
| | 47* | 5,518,712 | May-96 | Stewart | | | |
| | 48* | 5,547,659 | Aug-96 | Rinaldi et al. | | | |

FOREIGN PATENT DOCUMENTS

| | | Document Number | Date | Country | Class | Sub Class | Translation Yes or No |
|--|-----|-----------------|--------|---------|-------|-----------|-----------------------|
| | 49* | WO 98/24825 | Jun-98 | PCT | | | |
| | 50* | WO 98/25710 | Jun-98 | PCT | | | |
| | 51* | WO 98/38969 | Sep-98 | PCT | | | Abstract |

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

| | |
|-----|---|
| 52* | Co-pending U.S. Application No. 09/627,055; Attorney Docket No.: 05725.0662-00000 Title: RESHAPABLE HAIR STYLING COMPOSITION COMPRISING ACRYLIC EMULSIONS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: July 27, 2000 |
| 53* | Co-pending U.S. Application No. 09/627,785; Attorney Docket No.: 05725.0663-00000 Title: RESHAPABLE HAIR STYLING COMPOSITION COMPRISING POLYURETHANE DISPERSIONS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: July 27, 2000 |

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| Examiner Initial* | | Document Number | Date | Name | Class | Sub Class | Filing Date If Appropriate |
|-------------------|-----|-----------------|--------|-------------------|-------|-----------|----------------------------|
| | 54* | 5,589,157 | Dec-96 | Hatfield | | | |
| | 55* | 5,620,683 | Apr-97 | Tong et al. | | | |
| | 56* | 5,658,558 | Aug-97 | Schwartz | | | |
| | 57* | 5,662,892 | Sep-97 | Bolich Jr. et al. | | | |
| | 58* | 5,688,493 | Nov-97 | Sugawara et al. | | | |
| | 59* | 5,938,058 | Aug-99 | Kim | | | |

FOREIGN PATENT DOCUMENTS

| | | Document Number | Date | Country | Class | Sub Class | Translation Yes or No |
|--|-----|-----------------|--------|---------|-------|-----------|-----------------------|
| | 60* | WO 98/51266 | Nov-98 | PCT | | | |
| | 61* | WO 99/63954 | Dec-99 | PCT | | | Abstract |
| | | | | | | | |

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| 62* | Co-pending U.S. Application No. 09/695,392; Attorney Docket No.: 05725.0756-00000 Title: RESHAPABLE HAIR STYLING COMPOSITIONS COMPRISING ACRYLIC EMULSIONS Inventors: Isabelle ROLLAT et al. U.S. Filing Date: October 25, 2000 |
| 63* | Co-pending U.S. Application No. 09/769,311; Attorney Docket No.: 05725.0821-00000 Title: RESHAPABLE HAIR STYLING COMPOSITION COMPRISING SILICON-CONTAINING POLYCONDENSATES Inventors: Isabelle ROLLAT et al. U.S. Filing Date: January 26, 2001 |

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| Examiner | Date Considered |
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| Applicant | Isabelle ROLLAT et al. | | |
| Filing Date | October 28, 2003 | Group: | 1615 |

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